REMARKS

Reconsideration and allowance of the present application are respectfully requested. Claims 1-16 remain pending in the application. By the amendment, claims 3 and 11 are amended to insert a period, and claims 17 and 18 are added.

In numbered paragraph 6, independent claims 1 and 9, along with various dependent claims, are rejected as being anticipated by U.S. Patent No. 6,747,957 to Pithawala et al. (Pithawala). In paragraph 13, claims 1, 5, 6, 8, 9, 13, 14 and 16 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,704,284 (Stevenson). In number paragraph 21, dependent claims 2-4 and 10-12 are rejected as being unpatentable over the Pithawala patent in view of U.S. Patent No. 6,178,449 to Forman et al. (Forman). In numbered paragraph 31, dependent claims 7 and 15 are rejected as being unpatentable over the Pithawala patent, in view of U.S. Patent No. 6,661,778 to Trofin et al. (Trofin). These rejections are respectfully traversed because, among other reasons, none of the documents relied upon by the Examiner teach or suggest using a **database of measured response times** from **plural** nodes to monitor a network of nodes, as recited in claims 1 and 9; nor do they teach or suggest that the response time of a node is updated based on a node priority, as further recited in dependent claims 17 and 18.

On page 2 of the Office Action, paragraph 7, the Examiner incorrectly asserts that the Pithawala patent discloses relaying the response time of each node to a database of the network manager.

Notwithstanding the Examiner's assertion, the Pithawala patent does not disclose or suggest "relaying the response time of each node to a database of the network manager," as recited in claims 1 and 9. As discussed in the Abstract of the

Pithawala patent, the disclosed method is directed to measuring node availability of specific nodes (i.e., leaf nodes) in a manner similar to that described in the "Background of the Invention" of Applicant's specification. However, this patent does not disclose using a **database of measured response times** from **plural** nodes to monitor a network of nodes (i.e., without significantly increasing network traffic). The portions of the Pithawala patent relied upon by the Examiner merely disclose that network availability is determined based on the total number of ICMP pings attempted and the total number of ping responses returned from leaf nodes (abstract). The network availability as disclosed in the Pithawala patent is not determined based on relaying the response time of each of plural nodes to a database of a network manager, as recited in claims 1 and 9. The Pithawala patent also does not address the update of the response time based on a node priority, as recited in claims 17 and 18. Claims 1 and 9, along with claims 17 and 18, are therefore allowable.

The Forman patent fails to overcome deficiencies of the Pithawala patent. The Forman patent controls the operation of a transaction time measurement mechanism 390 (column 5, lines 23-29; Figure 3). The transaction time disclosed in the Forman patent does not relate to the response time as claimed. Rather, the Forman patent's transaction time relates to the time for a server system to process a particular application as requested (column 5, lines 46-52).

Thus, any combination of features from the Forman patent with features of the Pithawala patent would not have resulted in the presently claimed invention. At best, any such combination would have resulted in using the transaction time measured

by a server in the Forman patent to determine network availability in the Pithawala patent.

The Trofin patent also fails to overcome the deficiencies of the Pithawala patent. The Trofin patent relates to statistical collection in a data communication network in which the status of the nodes included in the various segments within the network is verified (abstract). However, the status of the nodes as taught by the Trofin patent relates to node availability, specifically as to whether the node is available or whether the node is down (column 3, lines 34-51). Accordingly, the Trofin patent does not disclose or suggest relaying the response time of each of plural nodes to a database of a network manager, as recited in claims 1 and 9. The Trofin patent also does not address the update of the response time based on a node priority, as recited in claims 17 and 18.

Accordingly, any combination of features from the Trofin patent with features of the Pithawala patent would not have resulted in the presently claimed invention. At best, any such combination would have resulted in providing a network availability monitor as taught by the Pithawala patent with a discriminating capability as taught by the Trofin patent to ascertain whether a node is available or whether the node is down.

For at least the foregoing reasons, Applicants' claims 1 and 9 are allowable over the Pithawala patent, considered individually or in combination with the Forman patent and the Trofin patent. The remaining claims depend from independent claims 1 and 9 and recite additional advantageous features which further distinguish over the documents relied upon by the Examiner.

In numbered paragraph 13, independent claims 1 and 9, along with various dependent claims, are rejected as being anticipated by U.S. Patent No. 6,704,284 to Stevenson et al. (Stevenson). This rejection is respectfully traversed. The portions of the Stevenson patent relied upon by the Examiner describe a method similar to that discussed in Applicants' "Background", and do not disclose using a **"database of measured response times"** from **plural** nodes to monitor a network of nodes, as recited in claims 1 and 9, nor does this patent disclose that the response time of a node is updated based on a node priority, as further recited in claims 17 and 18.

The Stevenson patent discloses that a network management station may send a signal to a device over a link which prompts a response from the device (column 4, lines 46-51). The Stevenson patent further discloses that the network management station will monitor the time taken to receive a response from the device (column 4, lines 51-55). However, the Stevenson patent does not disclose relaying the response time of each node to a database, as recited in claims 1 and 9; and updating the response time based on a node priority, as further recited in claims 17 and 18.

For at least the foregoing reasons, claims 1 and 9 are allowable over the Stevenson patent. The remaining claims depend from independent claims 1 and 9, and recite additional advantageous features which further distinguish over the documents relied upon by the Examiner.

The present application is considered in condition for allowance. All objections and rejections raised in the Office Action having been addressed it is respectfully submitted that the application is in condition for allowance and a Notice of Allowance is respectfully solicited.

Respectfully submitted,

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